

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA Division

In re:

Darrin Z. Burton

Case No. 19-12225-BFK
Chapter 13

Debtor

.....
MOTION TO REHEAR AND RECONSIDER

TO THE HONORABLE BRIAN F. KENNEY, US BANKRUPTCY JUDGE:

COMES NOW your Debtor, Darrin Z. Burton, and moves this Court To Rehear and Reconsider the issues raised by the Trustee's Motion To Dismiss With Prejudice (Docket No: 52 and amended Docket No: 53) which was originally heard on June 4, 2020. In support of his Motion, the Debtor states as follows:

1. Exhibits 1, 2 and 3 to this Motion document that \$4,326.90 was withheld by the employer during February 2020 but not received by the Trustee. The Debtor was not aware of this situation until he received the accounting attached to the Trustee's Motion To Dismiss. In spite of his continuing efforts to resolve the failure to remit those funds, the Debtor has been unable to get any explanation or corrective action by the employer. These funds represent a major portion of the default which lead to the Motion To Dismiss, and was clearly not the fault of the Debtor, nor was it within his control.
2. The Debtor believes this is the type of an unforeseen situation which the Court recognized could occur, when the Court provided: "Throughout the duration of the case, the Trustee shall send the Debtor and Debtor's counsel a Notice of Default if the Debtor is not timely with his payments. The Trustee is authorized to communicate directly with the Debtor for this purpose. If the Debtor does not cure the default within 15 days, or if the Debtor defaults 3 times within a 12-month period, the Trustee shall file a Certification of Default and a proposed Order. Upon the filing of a Certification of Default, the case will be dismissed with prejudice for a period of 2 years. (underlining added)(Docket No: 43).
3. The Debtor asserts that he should have received a "Notice of Default" which should have included the time limit to cure the default. Such a "Notice of Default" was not issued. The Debtor further asserts that although the Motion To Dismiss (Docket No: 52) did alert him of the "default," it was improper because: the "Notice of Default" previously ordered by the Court was not issued; and the Motion failed to alert him to the time limit to cure [and the amended Motion (Docket No: 53) referencing the earlier Order and specifically seeking dismissal with prejudice also did not alert him to the time limit to cure].

4. The Debtor further asserts that his cashiers check (\$4,900.00) curing the default, was delivered to the Trustee's Memphis, TN address on the morning of June 4, 2020 (which was within 15 days of the filing of the Trustee's Amended Motion To Dismiss), and constituted a timely curing of the default (Exhibits 4, 5 and 6).
5. The Debtor maintains that under these circumstances, dismissal with prejudice is neither fair nor reasonable. Further, dismissal of his case would effectively result in the Debtor's loss of his "security clearance" and current level of income. This will be detrimental not only to the Debtor and his family, but equally importantly to all his creditors. It must be noted that the Debtor is committed to paying a very substantial amount into the Plan and will not receive a Discharge, so his creditors retain the ability to pursue collection even upon completion of Plan payments.
6. The Debtor maintains that under the circumstances, the Motion To Dismiss should be denied, noting that the procedures previously established by the Court (Docket No: 43) provide for a effective means of managing this case.

Accordingly, the Debtor asks the Court to rehear and reconsider this matter, and to deny the Trustee's Motion To Dismiss.

/s/Darrin Z. Burton
Darrin Z. Burton, Debtor

/s/Earl J. Oberbauer, Jr.
Earl J. Oberbauer, Jr. Esquire
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Counsel for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2020, a true copy of the foregoing MOTION TO REHEAR AND RECONSIDER was sent electronically to the US Trustee and the Chapter 13 Trustee, Jonathan B. Vivona, PLC, and mailed to all parties on the attached list.

/s/Earl J. Oberbauer, Jr.
Earl J. Oberbauer, Jr. Esquire

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Auto Equity
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Bank of America
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Fredericksburg, VA 22401

Bank of Missouri
Total Card Inc
5109 S. Broadband Lane
Sioux Falls, SD 57108

Barton & Mills School of Dance
619 Garrisonville Rd
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BB&T (fka: First Virginia Bank
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Henrico, VA 23228

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Salt Lake City, UT 84130

Carrington Mortgage Services
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Westfield, IN 46074

Celtic Bank Corp
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Columbia Gas
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Comcast Communications
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